

SERVED: November 19, 1992

NTSB Order No. EA-3729

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of November, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10939
v.)	
)	
MARK D. LENDER,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent appeals¹ from the oral initial decision of Administrative Law Judge Joyce Capps, issued in this proceeding on September 6, 1990 at the conclusion of an evidentiary

¹Despite indicating an intent to waive his appeal, respondent did file a Notice of Appeal, and the document he submitted "in lieu of" a brief on appeal contains arguments on the issue of sanction. Therefore, we will treat it as an appeal on the issue of sanction, as did the Administrator in his reply brief.

hearing.² The law judge affirmed the portion of the Administrator's order suspending respondent's Airline Transport Pilot Certificate (ATP) for violations of sections 135.101, 135.227(b)(1), 91.31(a), and 91.9 of the Federal Aviation Regulations (FAR), 14 C.F.R. parts 135 and 91. The law judge reduced the suspension sought by the Administrator from 90 days to 75 days due to her dismissal of a charge under FAR section 91.5.³

In support of his appeal on the issue of sanction, respondent in effect argues that a suspension is unnecessary because the proceeding has impressed upon him the seriousness of his violation and has chastened him, that because of the proceeding he has suffered embarrassment with his employers and co-workers, and that aviation is both his livelihood and his recreation. These factors, he maintains, make the suspension especially onerous to him.⁴ However, the Board has previously held that whether or not a respondent has "learned his lesson" does not constitute a valid basis for reducing an otherwise reasonable suspension.⁵

²A copy of the oral initial decision, an excerpt from the transcript, is attached.

³The Administrator did not appeal the reduction in sanction.

⁴Respondent does not argue that the sanction imposed by the law judge is not in accord with Board precedent.

⁵*Administrator v. Agans, Sr.*, NTSB Order No. EA-3630, p.3 (July 10, 1992). See also *Administrator v. Peat*, 3 NTSB 57, 62 (1977), reconsid. denied, 3 NTSB 71 (1977). We would observe, moreover, that the law judge was not convinced that the respondent would alter his future conduct to avoid a repetition

Upon consideration of the briefs of the parties and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order as modified by the law judge whose findings we adopt as our own.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, and the initial decision are affirmed; and
3. The 75-day suspension of respondent's ATP certificate shall begin 30 days from the service of this order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

(..continued)
of violations such as those alleged here.

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).